COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Combined Third and
Fourth Ninety-Day Report To The Governor And Clerks Of The Senate and House Pursuant To Chapter 463, Of The Acts Of 1976.

Respectfully submitted,

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I. INTRODUCTION:

This is the combined third and fourth Ninety-Day Report submitted by the three Commissioners of the Massachusetts Commission Against Discrimination under Chapter 463 of the Acts of 1976. Since this Report marks the end of the first full year under three full-time Commissioners, the Report will direct attention to both the accomplishments of this first year and the goals still to be accomplished.

II. BACKLOG REDUCTION:

The major problem which faced the three new Commissioners in March, 1977 was the constantly growing backlog of complaints lodged with the agency. The backlog problem, which also distressed the Legislature, became the Commission's top priority, and the agency was mobilized to attack it on all fronts.

The object of the backlog effort is to investigate and make determinations on as many cases as possible, as promptly as resources permit. The results of the first stage backlog effort were reported in the second Ninety-Day Report (p.4).

The second stage of the backlog effort was initiated in October, when a Backlog Unit, consisting of two Senior MCAD investigators, CETA employees and student interns was established to spearhead the attack. The Commissioners have established a performance goal for this unit of 175 cases per month, or 700 cases per year. Fully 600 of these should be

employment cases which will be credited toward fulfilling the Agency's agreement with the E.E.O.C.

The results of the backlog effort to date can be seen in the simple statistics:

Cases in active file at the end of 1976 - 3900

Cases in active file at the end of 1977 - 3000

More cases were closed in 1977 than in any prior year in this Commission's history. Thus, despite the 1700 complaints filed in the last calendar year, the backlog of Commission cases has been reduced by 900 during the same period.

While substantial inroads have been made into the MCAD's backlog, its prompt elimination (the Commission's goal and the Commonwealth's mandate) depends upon additional funding and additional investigator's positions. At the present rate, with only the resources now available, the backlog will not be eliminated until March, 1981. This predicted date is not near enough to be acceptable to the Commissioners. Therefore they are making every effort to obtain the assistance needed to shorten the time required.

A. PUBLIC HEARINGS:

The Commissioners inherited a serious backlog problem with cases waiting for conciliation or public hearing. The Commissioners have developed a set of conciliation guidelines to make this process work more effectively. They have also established a hearing list, and have embarked on a greatly expanded hearing schedule.

During the first year, the Commission held less than twelve hearings. The legal and investigative staff were being deployed on backlog and new case processing procedures. However, with new procedures implemented and sound management systems operational, the Commissioners can now devote more time to the public hearing role. They have established a minimum goal of twenty-six hearings. They have also entered into an agreement with the Division of Hearing Officers, whereby the DHO has agreed to designate a hearing officer to conduct hearings for the Commission. This arrangement should more than double the adjudicatory capacity of the Commission.

B. INTERN PROGRAM:

Another major factor in backlog reduction has been the use of student interns. Unfortunately, this program has a built-in problem. The interns must be trained for a period at the start, work only part-time since they are also attending classes, are apt to go out of town during school vacation, and, in any case, regard their participation as temporary. Given the many interruptions of intern work, the Commissioners came to the conclusion that this essential program needed to be revised for greater cost effectiveness. Therefore a restructuring project was undertaken to define curriculum, to lay guidelines for time-commitment, and to develop a constant training mechanism. Assistance has also been sought

from the local law schools. The effects of this restructuring have been very satisfactory since it permitted successful use of interns to make unexpected progress in the attack on the backlog. However the Commission lacks the resources needed to provide adequate supervision for the longer number of interns which would be needed to increase their rate of backlog reduction. As an alternative, if four full-time field investigators could be added to the Commission staff, the Intern Program would be less crucial in the backlog effort.

III. MANAGEMENT REORGANIZATION:

The change from four part-time Commissioners to three full-time Commissioners, one of whom was based in Springfield rather than all being based in Boston, allowed major structural changes in the MCAD.

At the highest level, administrative policy making was directly centralized by eliminating the second-rank position of Director of Administration. The Chairman is now the primary decision-maker supplemented by the other two Commissioners in selected areas. The Commissioners also decided that they, rather than the legal staff should make the ultimate determinations of "probable cause" or "lack of probable cause." This has unified the decision-making criteria and freed the legal staff to function in the more effective roles of agency counsel and trial counsel. The Commissioners have also developed a "hands on" method of dealing directly with local

advisory councils on discrimination problems and efforts. The beneficial efforts of direct contact between Commissioners and localities should be made more permanent by the state-wide advisory council to the MCAD. The council was created by recent legislation and is comprised of thirty members, eleven of whom are Chairmen of regional, MCAD advisory councils and nineteen of whom represent special interest groups specified in the statute. The Chairman of the state-wide council has been appointed by Governor Dukakis, and plans have been made for regular meetings between the council and the three Commissioners. Finally, the Commissioners have also undertaken direct action in the field of Civil Rights coordination. Further details on this activity may be found in the section titled Federal/State Civil Rights Review, <u>infra</u>.

At the level of office management, the Commissioners appointed an executive secretary at the start of the third quarter of their time in office. An important part of the executive secretary's job is the modernization and rationalization of the Administrative Procedures Manual. In addition, at the discretion of the Commission, the present appointee is responsible for exercising control of budget and personnel matters, implementing Commission policy, supervising the clerical staff, performing the duties of affirmative action officer, coordinating the intern program and coordinating the Management Task Force.

The Management Task Force is composed of the chief person in each of the five units: Investigations, Public Employment, Control, Agency Counsel and the Executive Secretary. This task force meets at least once a week with one or more Commissioners to report on progress, receive new assignments and generally to "grieve and groan."

To co-ordinate the rapidly expanding activities of the Commission, a computerized Rapid Charge Processing system was put into effect in June, 1977. Using this system, the Case Control Unit has been developing the capability to generate statistical reports on cases filed and cases closed monthly, by type, class and jurisdiction. The monthly reports which, in the past, were produced manually in two weeks are now produced in two days. In addition, the case status and alphabetic listing reports are now produced every week (instead of bimonthly) also in two days.

One important task for the proper functioning of the computerized system was the correction of past accumulated errors. This project has proceeded as planned. The 1100 errors existing at the end of September, 1977, had been reduced to 116 by the end of November. Overall, the accuracy rate in this unit is up to 95%

The case control unit also produces bottleneck reports on cases which are failing to move at the desired rate. These reports are reviewed at the weekly management meeting

and are used to target the next assignments. The resulting memos require investigators who are proceeding too slowly to produce either prompt and specific action or written explanations with projected timetables for future action.

IV. MORE EFFICIENT CASE PROCESSING:

Determined to improve the process by which the agency handled its case load, the Commissioners entered into a contract with Community Dispute Services of the American Arbitration Association. The project included a thorough review of the system presently used by MCAD, plus examination of systems used for similar purposes in other states. At the end of August, 1977, the Project Manager submitted a draft of the new Case Processing Guidelines to the Commissioners.

The draft was reviewed by numerous persons and groups including the MCAD staff, representatives of the Attorney General, the Massachusetts Bar Association, the Lawyers' Committee for Civil Rights, the Civil Liberties Union of Massachusetts and the Massachusetts Law Reform Institute. In December, 1977, the Commission held informal hearings on the draft Guidelines which were extremely productive.

While the draft was being rewritten, the A.A.A. gave the veteran MCAD staff extensive training geared to rapid case processing procedures. At the same time, the technique of a Fact-Finding Conference was put into practice as part

of the announced trial period. A one-page check sheet was prepared by the supervisor to assist the investigators who conducted the conferences. In general, the reaction has been favorable enough for the supervisor to feel the new process is going in the right direction. The parties seem pleased with the results and as the staff gains experience, their cautious acceptance of new methods seems to be turning into enthusiasm.

The A.A.A. training program has proven to be very satisfactory for the entire MCAD staff. The investigators can use the new system and procedures efficiently. The effectiveness of attorneys and Commissioners has also increased markedly. The whole staff has been thoroughly acclimated to a two-pronged attack on complaints. First, where possible, everyone hopes to achieve voluntary settlement and thus, close the case. Second, if a voluntary settlement proves to be impossible, the staff is now well-prepared to move into public hearing and, where necessary, agency resolution and enforcement.

Aware of the sensitivity of proper timing, especially for full staff participation, the Commissioners made a policy decision to reject the implementation schedule proposed by the consultants. The consultants had estimated that the new Guidelines could be implemented by January 28, 1978. This, the Commissioners felt, would not allow sufficient time to

rework the Guidelines with the benefit of all the collected criticisms. Secondly, the consultants had urged that all resources be devoted to handling the current case load rather than investing a certain portion in handling the backlog. The MCAD decided that such action would violate both its philosophical commitment and its legislative mandate to eliminate the backlog.

When the re-write has been completed, and circulated, and interested parties given an opportunity to evaluate the results, the final case Processing Guidelines will be implemented. By the Spring of 1978, with the help of the experienced and devoted staff, the Commissioners believe that their goal of a ninety-day case processing limit for virtually all incoming cases will be within reach.

V. AGENCY INITIATED COMPLAINTS:

By statute, the Agency is not restricted to reviewing only complaints which come in from the outside. If the Agency has knowledge of apparent discriminatory behavior in violation of state and/or federal civil rights statutes, MCAD has the power to initiate a complaint on its own initiative. In the past, this power has been little used, and then on a rather small scale problem, such as Boston taxi cab drivers. This past year, however, the Commissioners have realized that this type of complaint can and should be a powerful tool to bring about constructive change.

As a first step, the MCAD identified ten of the worst offenders in the Commonwealth. The aim of this "Ten Most Wanted" list was to target objects for Commission initiated complaints. However, before embarking on a crusade against all ten at once, the Commissioners realized that an efficient and effective systemic approach required careful groundwork. Resources should be first surveyed, then additional resources located and collected, and finally they should be allocated thoughtfully.

Thus the year has been used to examine the resources available and to seek out ways to increase them. One productive if limited effort was the rationalization of the agency organization. Another effort was aimed at showing the legislators how an increase in the MCAD's budget would speed achievement of legislative objectives. Finally, and most potentially fruitful, is the continuing effort to obtain a substantial increase in federal funds. The effect of this year's activity has been to lay the groundwork to enable the Agency to move aggressively against offenders on the "Ten Most Wanted" list.

VI. THE YEAR IN STATISTICS

COMPARATIVE SUMMARY

March, 1976 - February, 1977

March, 1977 - February, 1978

A. New Complaints Received

1976		1977	
Quarter 1	457	Quarter 1	491
Quarter 2	507	Quarter 2	545
Quarter 3	375	Quarter 3	394
Quarter 4	396	Quarter 4	282
TOTAL	1735	TOTAL	1712

B. Complaints Closed

1976		1977	
Quarter 1	362	Quarter 1	645
Quarter 2	529	Quarter 2	602
Quarter 3	528	Quarter 3	769
Quarter 4	569	Quarter 4	456
TOTAL	1988	TOTAL	2472

C. Monetary Awards To Complainants

1976		1977	
Quarter 1	31,763.43	Quarter 1	83,632.46
Quarter 2	30,708.90	Quarter 2	49,010.07
Quarter 3	41,094.08	Quarter 3	28,236.75
Quarter 4	138,009.09	Quarter 4	34,894.37
TOTAL	241,575.50	TOTAL	195,773.65

The use of a computerized system has enabled the Agency to embark on a scientific management information system in place of the old system which was basically educated guesswork. Already it is possible to examine the case load and progress of each staff member weekly and to use this for individual assignments which results in the prioritization of the individual's workload. Further advantages are foreseen from the continued sophistication of the Rapid Charge Processing system, a project for which federal funds are being requested.

VII. OTHER RELATED ACTIVITIES OF THE COMMISSION

In addition to its basic functions the Commission has been productive in other important areas.

1. Field Offices - Springfield, Worcester, New Bedford

The Springfield office has been clearly benefited by the regular presence of a Commissioner. The Worcester office is now fully staffed and moving efficiently. However, there is need for additional assistance at the New Bedford office. The Boston office has assigned one of its legal staff to New Bedford, but it is all this attorney and the resident staff can do to keep abreast of current cases. Thus, the New Bedford office may be generating still more backlog.

2. E.E.O.C. Federal Grant Program - 1978-1979

With the end of the '77-'78 grant and the marked increase in the MCAD performance, the Commission anticipated substantial increases. However, the Commission failed to allow for major changes at the top of both agencies and the effect of such changes on the grant negotiations. Thus, while the amount of the new grant will be almost double that of the old ($127,000 in 1977 to $244,000 in 1978) the Commissioners felt that the amount could have been more than three times the 1977 figure if this year's productivity had been accurately reported. Feeling that the inaccuracies had originated in the District Office of E.E.O.C., the three Commissioners travelled to Washington in an effort to correct

the erroneous report. As a result of these efforts, the Commission hopes to reap an additional $80,000 bringing the effective total of the re-negotiated grant to $324,000.

In addition to this grant negotiation, reported plans to reduce the staffing of the local E.E.O.C. office are of great concern to the Commission. The E.E.O.C. refers many individual cases to the MCAD for processing. The result is an estimated one-to-one relationship between the number of E.E.O.C. personnel and the MCAD backlog. Thus, any reduction in local E.E.O.C. staff will require increased financial support from the Legislature to make it possible for MCAD to fulfill its legislative mandate to conquer the backlog problem.

3. Public Information

The Commissioners, functioning without a public information officer, are energetically trying to bring the methods and goals of the MCAD to public attention and acceptance. Some members of the media have been extremely cooperative. However, fearing to spread their efforts too thin, the Commissioners have been concentrating on meeting with relevant special interest groups such as the Complainant's bar and the Respondent's bar. The effects of this strategy have been promising.

Presumably as a result of the revigorated Commission activity which has received increasingly favorable press coverage there has been a large increase in requests for MCAD speakers. Therefore the Commissioners are re-activating the "Speakers Bureau" to be filled by staff volunteers. The Commission views the Bureau as a visible vehicle through which the public can be educated on MCAD law and which can help the Agency maintain a positive image with its constituents.

4. Federal/State Civil Rights Review

Implementation of the Civil Rights Review of federal and state grant applications intensified as the program was extended to increasing numbers of grants especially after September, 1977. Significant success was achieved in negotiating memoranda of agreement with or in receipt of affirmative action plans from over 40 cities and towns. The memoranda provide a formal contractual mechanism whereby the cities and towns agree with the Commission to the development of affirmative and remedial programs in the areas of employment, housing and contract compliance in construction.

Draft Affirmative Action Guidelines in both areas of employment and housing were printed and distributed to all 351 cities and towns in the Commonwealth as well as to a number of other entities. Commission staff began monitoring performance of various cities and towns under the memoranda

of agreements and began to work in close conjunction with the entities to achieve affective implementation. In Summary:

a. Memoranda of Agreement- were reached with, among other cities and towns; Boston, Cambridge, Chelsea, Watertown, Springfield, Salem, Newburyport, Lynn, Lawrence, Malden, Brookline, Framingham, Marlborough, Fitchburg, Worcester, Holyoke, Haverhill, Arlington, Sharon. Additionally, agreements have been negotiated with a number of other entities and are in the final stages of being processed for signatures.

b. Draft Affirmative Action Guidelines - were mailed to the chief executive offices of the 351 cities and towns, as well as the area of planning councils and other interested parties. A public hearing on the guidelines was held at the Commission offices on January 12, 1978. Every effort has been made to obtain responses from individual cities as well as local organizations. With the aid of those responses, a final set of Guidelines has been drawn up. Promulgation is expected by June 1, 1978.

c. Preliminary meetings - have been held with representatives from the "39" Community Development Block Grant "HUD" entitlement communities in conjunction with the joint session sponsored by the Department of Community Affairs and MCAD. At the all-day information session which was attended by nearly all of the entities, the Commissioners, assisted by the staff, provided detailed information on future requirements of the local entities.

d. Work continued on Department of Community Affairs Affirmative Action Guidelines for local housing authorities. Although delays have occured, a public hearing has been held and a redrafted version completed. The regulations should be promulgated in June, 1978. A major problem has been to find ways of involving smaller communities in regional housing plans which make specific commitments.

e. Commissioners are meeting with members of the development cabinet in an effort to plan implementation of the state's Civil Rights Review of State Grant applications. This activity will be ongoing as the Commission develops systems to insure both an effective and efficient system for review of discretionary state funding programs.

f. Commissioners met with the governor's Local Advisory Committee and representatives from the Mass. League of Cities and Towns. Every effort is being made to advise local entities of requirements long before specific grant applications are made and to provide them with input in the development of guidelines.

g. As part of this program, the Commission and the State Director of Affirmative Action caused state agencies which are applicants for discretionary state assistance, to maintain standards equal to or greater than those required of local jurisdictions. As a result, redrafted affirmative action programs have been submitted to the State Director of Affirmative Action.

The Commission staff will continue to conduct the Civil Rights Reviews of Grant applications for conformity with federal and state equal opportunity requirements. Additionally, the Commission staff will continue to work with those communities which are charged with alleged Civil Rights violations to mediate the issues and to provide results which allow the cities and towns to continue to receive the federal ORS funding.

V. PUBLIC EMPLOYMENT COMPLAINT ACTIVITY

The two Field Investigators assigned to the division investigating complaints filed against public sector employers at the state, county and local level completed investigations of a total of 123 cases during 1977. The Division continued work on development of a rapid case processing system.

VI. CONTRACT COMPLIANCE

Work continued on the redraft of proposed public hearing guidelines for initiation of formal non-compliance proceedings against state contractors who are in apparent non-compliance. Meetings were conducted with the various state agencies in an effort to elicit responses to questions concerning the proposed hearing procedures and to insure conformity among all the agencies. Following hearings, a copy of the guidelines were submitted to the Secretary of State.

Additionally, continuing effort will be made to provide for re-evaluation of the current contract compliance system enforced throughout all state and state-assisted contracts. Areas under examination include the current numerical hiring goals as well as procedural changes in the contract specifications, which will provide for greater efficiency and eliminate duplicate reporting by contractors and/or state agencies. While reasonable success has been attained in the

program during the construction season, additional changes in the program must be initiated.

I. LEGAL DEPARTMENT

The past year has witnessed a significant evolution of the Legal Department's function. No longer responsible for case processing supervision, the lawyers are able to direct the bulk of their talents towards negotiating settlements and commencing an intensive attack on the public hearing backlog. Under the direction of the Acting General Council, a Senior Staff Attorney has been designated to supervise the attorneys in selecting, preparing, and trying of cases that previously had to lie dormant on the Commission's public hearing list because of the lawyers' case processing supervisory responsibilities.

In an effort to take full advantage of the powers statutorily conferred upon the Commission, specific lawyers have been assigned responsibility for swiftly initiating court actions to enforce Commission orders against recalcitrant respondents. Similarly, the Legal Department has sought and obtained court orders enforcing investigative subpeonas and enjoining the alienation of real property pending the disposition of alleged housing discrimination complaints. These activities have resulted in stepped up cooperation by persons dealing with the Commission's staff and, consequently, speedier resolution of complaints.

The Commission's historically unsatisfactory record on judicial review of its decisions has been sharply reversed in the last year. Among our recent successes has been the Supreme Judicial Court's affirmation of a Commission finding against the City of Springfield. The City had failed to promote the most qualified patrolman to the position of sergeant because of racial bias. Springfield Board of Police Commissioners V. M. C. A. D., S.F.C. No. 1285. The officer involved has been promoted to sergeant with all benefits, including salary, retroactive to 1971, the year he was unlawfully denied his promotion.

In LIFE Corporation v. M.C.A.D., Middlesex Superior No.75-4800, the Commission's decision that a highly qualified woman was unlawfully denied an executive position on the basis of her sex was upheld. The company opted not to appeal the confirmation to a higher court, but rather to comply with the Commission's order. The Legal Department will continue its efforts to defend the Commission's attack on unlawful discrimination at all levels of the employment spectrum.

Finally, the Legal Department, along with the entire Commission staff, hopefully, awaits the Supreme Judicial Court's determination in Massachusetts Electric Co. v. M.C.A.D., S.J.C. No. 1068. In this case, the Legal Department has zealously argued that Massachusetts law proscribes

as illegal sex discrimination the disparate treatment of pregnancy related disabilities by employers despite the United States Supreme Court's decision that such disparate treatment is not unlawful under the federal anti-sex discrimination in employment statute. The Commission will continue and expand on its mandate to represent the progressive attitudes of the Commonwealth's citizens and will not be dissuaded by less progressive tribunals in other parts of the nation.

The Legal Department is currently anticipating a significant increase in the amount of its EEOC grant. Resultant staff increases will enable the lawyers to implement a full scale assault on the widespread systemic discrimination plaguing minorities and women within the Commonwealth. As the efforts of those determined to exclude these groups from the enjoyment of equal opportunity become more sophisticated, this Commission becomes even more determined to meet this new challenge with the most competent and creative lawyering possible.